

## REMARKS

The Applicant does not believe that Examination of the foregoing amendment will result in the introduction of new matter into the present application for invention. Therefore, the Applicant, respectfully, requests that the above amendment be entered in and that the claims to the present application, kindly, be reconsidered.

The Office Action dated August 25, 2004, 2004 has been received and considered by the Applicants. Claims 1-16 are pending in the present application for invention. Claims 1-16 stand rejected by the August 25, 2004, 2004 Office Action.

The Office Action suggests a preferred layout to the specification. The Applicant, respectfully, asserts that the current version of 37 CFR 1.77(b), reproduced above, does not require that the various sections of the specification to a utility application have a section heading. The only requirement is that the sections appear in a particular order. Accordingly, the Applicant, respectfully, declines to make the modification suggested by the Examiner because it is not necessary.

The Office Action rejects Claims 1-3, and 5-16 under the provisions of 35 U.S.C. §103(a), as being unpatentable over U.S. Patent No. 5,551,077 issued to Oda (hereinafter referred to as Oda) in view of U.S. Patent No. 5,910,944 issued to Callicotte et al. (hereinafter referred to as Callicotte et al.). The Examiner states that Oda teaches all the elements of the rejected claims except for a means for starting the device at a programmable start time or a means for automatically and periodically updating a start time after said current time with the electric power supply being ensured solely by the main power source (col. 3, lines 12-14) powering the processing unit and a clock associated to an auxiliary power source to track current time. The Applicant, respectfully, points out that there is no clock associated to an auxiliary power source, to produce a current time taught or suggested by Oda.

The Examiner admits that Oda does not teach means for starting the device at a programmable start time. The Examiner's position is Callicotte et al. teach a means for starting the device at a programmable start time (column 4, lines 8-18) and a means for automatically and periodically updating a start time after said current time (column 4, lines 8-24, column 5, lines 15-25). The Applicant, respectfully, points out that teach entry and exit in to a sleep mode. There is no start time that is periodically updating after

said current time taught or suggested by Callicotte et al. Callicotte et al. teach a duration of sleep time; which does not suggest a periodic updating of a start time as recited by the rejected claims.

The MPEP §2142 states that in order to establish “a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant’s disclosure.”

Regarding the first requirement of a suggestion or motivation, the Examiner states that both Oda) and Callicotte et al. teach portable communication devices with power management, therefore a person skilled in the art would find it obvious to use the programmable starting and updating means of Callicotte et al. within the device taught by Oda. The Applicant respectfully disagrees. Callicotte et al. pertains to a sleep timer. Callicotte et al. do not address or discuss power failure situations in any way. A person skilled in the art would not be motivated to look to the methodology of synchronizing two communication devices as taught by Callicotte et al. for suggestions related to power failure in a communication device. Callicotte et al. do not discuss power failure. Neither, Callicotte et al. nor Oda suggests the combination made by the Office Action. The Office Action has not provided any teaching or motivation within either Callicotte et al. or Oda that would lead a person skilled in the art to apply the teachings of Callicotte et al. to the device of Oda.

The second requirement of a reasonable expectation of success is not met by the rejection contained in the Office Action. As stated in the MPEP §2142 the “teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant’s disclosure.” *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). The rejection contained in the Office Action has not provided any reasonable expectation of success for the combination from either of the cited references, Callicotte et al. or Oda. The rejection contained within the Office Action states that means for

starting the device at a programmable start time of Callicotte et al. can be used in the device of Oda. The Applicant respectfully disagrees. The time periods recited by the rejected claims are updated and programmable. As previously discussed, Callicotte et al. teach a duration of sleep time that is not updated. There is no indication where within the cited references, Callicotte et al. or Oda, that would give a person skilled in the art any indication that it would be possible to use the duration of sleep time taught by Callicotte et al. as a programmable time period as defined by the rejected claims or that doing so would have a reasonable expectation of success. The Applicant, respectfully, submits that if the sleep time duration of Callicotte et al. was applied to the device of Oda, the resulting device would attempt to start without any regard to the programmable time as recited by the rejected claims.

The clock of Oda is not used to provide a programmable start time. The Examiner has failed to indicate how the combination made by the Office Action would actually work. More, importantly, the rejection contained within the Office Action does not show where within the cited references that there exists a reasonable expectation of success for the combination made by the Office Action.

Moreover, the combination made by the final Office Action does not teach or suggest all the claim limitations. The Applicant would like to respectfully point out that rejected Claim 1 recites that the means for starting the device at a programmable start time includes a clock associated to an auxiliary power source, to produce a current time, and means for automatically and periodically updating a start time after said current time, the electric power supply for the updating means being ensured solely by the main power source. The clock as recited by Claim 1 is clearly identified as being part of the means for starting the device at a programmable start time. The rejection made by the Office Action states that Oda does not teach means for starting the device at a programmable start time. However, the rejection made by the Office Action states that Oda teaches the clock associated to an auxiliary power source. The recitation of rejected Claim 1 is very clear in reciting that the means for starting the device at a programmable start time includes a clock associated to an auxiliary power source, to produce a current time. The Examiner in making this rejection has taken the recited element of means for starting the device at a programmable start time, which is tailored to include a clock associated to an auxiliary power source to produce a current time, and divided this element between two prior art references. The Applicant respectfully asserts that all the claimed elements are not found in

the rejection made by the Office Action.

The Applicant respectfully points out that the means for starting the device at a programmable start time includes a clock associated to an auxiliary power source, to produce a current time. The Office Action cites Callicotte et al. for a programmable start time. The Applicant, as previously discussed, asserts that Callicotte et al. do not discuss means for starting the device at a programmable start time, specifically, which include a clock associated to an auxiliary power. In fact there is no programmable start time taught, or suggested, by Callicotte et al. much less one associated to an auxiliary power source. Therefore, this rejection is, respectfully, traversed.

The Examiner states that the combination made by the Office Action render obvious the elements of rejected Claim 6. Specifically, the Examiner states that Oda teaches these elements of rejected Claim 6 except for an automatic programmable start time. The Office Action states that Callicotte et al. teach a new start is automatically made the moment when a current time established by a permanent clock coincides with the previously updated start time. Page 3, lines 4-5 of the specification of the present invention defines “start time” as a start instant and not a calculation based on a time of day. The Applicant has the right to be a lexicographer in defining the recited claim terms. Therefore, the term “start time” is given a specific definition within the specification of the invention, and that term when recited in the claims must be interpreted consistently with the definition that is given within the specification. The Office Action has employed a start time from Callicotte et al., which is a duration of time explicitly based on a fixed period of time that is completely inconsistent with the definition of “start time” supplied by the specification for the present invention. Therefore, this rejection is, respectfully, traversed.

The remaining claims depend from either Claim 1 or Claim 6 and further narrow and define these claims. Accordingly, these claims are also believed to be allowable over the cited references. Therefore, this rejection is respectfully traversed.

New Claims 17-20 have been added by the foregoing amendment that define subject matter described on pages 5-6 of the specification to the present invention. Therefore, examination of these claims should not result in the introduction of new matter into the present application for invention. The subject matter of new Claims 17-19 is not disclosed or suggest by

the cited references. Accordingly, the subject matter defined by new Claims 17-20 is believed to be allowable.

Applicant is not aware of any additional patents, publications, or other information not previously submitted to the Patent and Trademark Office which would be required under 37 C.F.R. 1.99.

In view of the foregoing amendment and remarks, the Applicant believes that the present application is in condition for allowance, with such allowance being, respectfully, requested.

Respectfully submitted,

By 

**James D. Leimbach, Reg. 34,374**  
**Patent Attorney (585) 381-9983**

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited this date with the United States Postal Service as first-class mail in an envelope addressed to: COMMISSIONER FOR PATENTS, Mail Stop: Amendment  
P.O. Box 1450, Alexandria, VA 22313-1450

on: December 24, 2004

(Mailing Date)

  
(Signature)